



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

Steve Wark  
Image & Design

OCT 8 2010

Las Vegas, NV 89129

RE: MUR 6269

Dear Mr. Wark:

On April 13, 2010, the Federal Election Commission (the "Commission") notified you of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). On October 5, 2010, the Commission found, on the basis of the information in the complaint, and information provided by you, that there is no reason to believe that you and Image & Design violated the Act. Accordingly, the Commission closed its file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's findings, is enclosed for your information.

If you have any questions, please contact Tracey L. Ligon, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Roy Q. Lockett  
Acting Assistant General Counsel

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION  
FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Steve Wark and Image and Design

**MUR:** 6269

**I. INTRODUCTION**

This matter was generated by a complaint filed with the Federal Election Commission by Sam Lieberman, alleging violations of the Federal Election Campaign Act of 1971 ("the Act"), as amended by the Bipartisan Campaign Reform Act of 2002 ("BCRA"), by Steve Wark and Image and Design.

**II. FACTUAL AND LEGAL ANALYSIS**

**A. Factual Background**

The complaint alleges that on or about March 18, 2010, Mike Montandon for Governor ran an Internet advertisement opposing a federal candidate. Complaint, pp. 2-3. The advertisement includes a picture of Senator Harry Reid, an incumbent candidate for the United State Senate from Nevada, along with his son, a Nevada gubernatorial candidate, and the following sentence: "Put an end to the Reid dynasty." Complaint, Attachment A. Below the sentence is a "Donate Now" button, followed by the disclaimer: Paid for by Montandon for Governor. *See Id.*

The complaint asserts that the advertisement was coordinated through the use of a common vendor, Steve Wark. Complaint, p. 4. Specifically, the complaint asserts that Wark, political consultant and president of Image and Design, works for both the Tarkanian and the Montandon campaigns, and that "it is likely that even if [Wark] did not help create this ad personally, he has conveyed material 'plans, projects, activities, or needs' of Tarkanian to the Montandon campaign." Complaint, p. 4-5.

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In his response, Mike Montandon states that he ran an advertisement that indicated that Rory Reid, one of his opponents in the race for governor of Nevada, was part of a "dynasty," in that his father is incumbent Senate Majority Leader Harry Reid. The reference to a "dynasty," he says, was obviously a reference to a son of Harry Reid. He states that his new media advisors, Harris and Associates, created the advertisement and did not coordinate the ad with anyone other than himself and his campaign manager. Montandon further states that Steve Wark knew nothing of the ad and was not employed by his campaign after November 2009.

In his response, Steve Wark states that he ceased working for the Montandon campaign in November of 2009, and that the advertisement at issue was apparently created, paid for, and placed at least 120 days after he ceased working for the campaign. He further states that he had no prior knowledge of the content, or the placement, of the advertisement, and that he has never seen the advertisement in any form or medium, with the exception of the copy attached to the complaint. In addition, he asserts that he never shared any of the plans, projects, activities, or needs of Tarkanian for Senate with the Montandon campaign.

**B. Analysis**

Under the Act, an expenditure made by any person "in cooperation, consultation, or concert, with, or at the request or suggestion of" a candidate constitutes an in-kind contribution. *See* 2 U.S.C. § 441a(a)(7)(B)(i); *see also* 11 C.F.R. § 109.20(a). Commission regulations set forth a three-prong test to define when a communication is coordinated with a candidate. A communication is coordinated with a candidate or candidate committee when: (1) the communication is paid for by a person other than that candidate, authorized committee or agent thereof; (2) the communication satisfies at least one of the four "content" standards described in

11 C.F.R. § 109.21(c);<sup>1</sup> and (3) the communication satisfies at least one of the six "conduct" standards described in 11 C.F.R. § 109.21(d). 11 C.F.R. § 109.21(a).<sup>2</sup>

Here, the complaint alleges that the conduct prong for coordination is satisfied based on a common vendor theory. The Commission's regulations provide that the conduct prong may be satisfied if the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects or activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication. 11 C.F.R. § 109.21(d)(4). The complaint, however, provides no specific information indicating that conduct showing coordination based on a common vendor theory occurred, and only speculates that the common vendor, Steve Wark, "very likely" used or conveyed to the payor information about the Tarkanian campaign's plans, projects, activities, or needs. *See* Complaint, p. 4-5. In contrast, available information unequivocally refutes the complaint's unsupported allegations. In particular, Wark states that he left the campaign in November 2009, more than 120 days before the advertisement appeared, and had no prior knowledge of the content, or the placement, of the ad, had never seen the advertisement in any

<sup>1</sup> The "content" standard includes: (1) an "electioneering communication" defined at 11 C.F.R. § 100.29(a) as a broadcast, cable, or satellite communication that refers to a clearly identified federal candidate, is publicly distributed within a specific time frame, and is targeted to the relevant electorate; (2) a "public communication" that disseminates campaign materials prepared by a candidate; (3) a communication that "expressly advocates" the election or defeat of a clearly identified federal candidate; and (4) a "public communication" that refers to a clearly identified candidate, is distributed 120 days or fewer before an election and is directed to a targeted audience. 11 C.F.R. § 109.21(o).

<sup>2</sup> The conduct prong is satisfied where any of the following types of conduct occurs: (1) the communication was created, produced or distributed at the request or suggestion of a candidate or his campaign; (2) the candidate or his campaign was materially involved in decisions regarding the communication; (3) the communication was created, produced, or distributed after substantial discussions with the campaign or its agents; (4) the parties contracted with or employed a common vendor that used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; (5) the person paying for the communication employed a former employee or independent contractor of the candidate who used or conveyed material information about the campaign's plans, projects, activities or needs, or used material information gained from past work with the candidate to create, produce, or distribute the communication; or (6) the person paying for the communication republished campaign material. *See* 11 C.F.R. § 109.21(d).

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form or medium with the exception of the copy attached to the complaint, and never shared any of the plans, projects, activities, or needs of Tarkanian for Senate with the Montandon campaign. Similarly, Montandon for Governor states that Steve Wark knew nothing of the ad and was not employed by his campaign after November 2009. Thus, there appears to be no basis for concluding that Mike Montandon for Governor coordinated the Internet advertisement with Tarkanian for Senate through a common vendor.<sup>3</sup> Thus, the Commission has determined to find no reason to believe that Steve Wark and Image and Design violated the Act.

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<sup>3</sup> Mike Montandon states that media advisors Harris and Associates created the advertisement and communicated only with Montandon and his campaign manager.